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FISCAL IMPACT STATEMENT

LS 6911

BILL NUMBER: SB 379

NOTE PREPARED: Mar 29, 2005

BILL AMENDED: Mar 28, 2005

SUBJECT: Delivery Sales of Tobacco Products.

FIRST AUTHOR: Sen. Weatherwax

FIRST SPONSOR: Rep. Cherry

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) *Shipping of Cigarettes:* This bill prohibits the shipping of cigarettes to an Indiana resident who is not a tobacco products distributor. It also provides that the prohibition does not apply to cigarette manufacturers that meet certain requirements. The bill repeals statutes governing delivery sales of cigarettes.

Licensure of Importers and Manufacturers: The bill also provides that a merchant may make a drop shipment of tobacco products through a distributor. The bill requires cigarette importers and manufacturers to obtain licenses from the Alcohol and Tobacco Commission. It specifies to and from whom distributors, importers, manufacturers, and retailers may sell and receive cigarettes. The bill requires importers and manufacturers to maintain documentation concerning certain cigarette transactions. The bill also imposes a monetary penalty for violations. It provides for public and private rights of action. The bill makes technical corrections. The bill adds pipe tobacco to the items excluded from the definition of "tobacco product". The bill also provides that a merchant may not mail cigarettes to an Indiana resident or retailer that is not a distributor.

Flea Markets: The bill also adds cigarettes and other tobacco products to items that may not be offered for sale at flea markets.

Effective Date: July 1, 2005.

Explanation of State Expenditures: (Revised) *Summary:* This bill may assist the DOR in better regulating Cigarette and Sales tax remittances by internet buyers and sellers. This bill may also assist the Alcohol and Tobacco Commission (ATC) in better regulating illegal tobacco sales to minors by internet merchants. The

overall administrative cost impact to the DOR and ATC is indeterminable. This bill will also have an indeterminable administrative cost impact on the Attorney General's Office (AG).

Shipping of Cigarettes: This bill prohibits the shipping of tobacco products, other than cigars, to an Indiana resident who is not a licensed cigarette distributor or an other tobacco products (OTP's) distributor.

The bill provides that the prohibition on the shipping of tobacco products does not apply to a cigarette manufacturer that does one of the following:

- (1) participates in, and performs their obligations under the Master Settlement Agreement;
- (2) places the applicable amount into a qualified escrow fund;
- (3) pays all applicable taxes under IC 6-7-1.

The bill provides that although a cigarette manufacturer that meets these conditions is not prohibited from shipping tobacco products, if they choose to ship these products to Indiana, the manufacturer must follow the provisions of IC 24-3-5-5 through IC 24-3-5-8. Those sections currently apply to all merchants, but this bill amends the references from merchants to cigarette manufacturers meeting the above conditions. These manufacturers are currently required to comply with IC 24-3-5-5 when shipping tobacco products to Indiana residents, therefore there is not expected to be any fiscal impact from these provisions.

The provisions of this bill may assist the DOR in better regulating Cigarette and Sales tax remittances by internet buyers and sellers. This bill may also assist the Alcohol and Tobacco Commission (ATC) in better regulating illegal tobacco sales to minors by internet merchants. The overall administrative cost impact to the DOR and ATC is indeterminable.

DOR estimates that there are approximately 300 OTP's licensed distributors and approximately 150 distributors licensed for cigarettes. It is estimated that a large percentage of the cigarette distributor licensee's also hold OTP's licenses. This would mean that the total number of licensed distributors is estimated to be between 300 and 350.

To obtain a license as an OTP distributor a person must pay DOR a registration fee of \$25 per year, and file a surety bond or letter of credit with the DOR for \$1,000.

To obtain a license as a cigarette distributor a person must pay DOR a registration fee of \$500 per year, and file a surety bond or letter of credit with the DOR for \$1,000.

Licensure of Importers and Manufacturers: These provisions of the bill will have an indeterminable administrative cost impact on the Alcohol and Tobacco Commission (ATC) and the Attorney General's Office (AG).

This bill requires cigarette importers and manufacturers to obtain licenses from the ATC. The bill specifies that the ATC shall impose a fee of \$500 to issue or renew a license. The administrative cost impact will depend upon whether the \$500 fee is able to cover the increased administrative burden to the ATC.

This bill also requires that distributors report certain information regarding distribution of cigarettes to the AG on the 15th of every month. There are currently 100 to 150 licensed distributors in the state. This provision's administrative cost impact on the AG is presumed to be able to be covered through the use of existing staff and

resources. This provision of the bill, relating to reporting to the AG, specifically exempts a licensed manufacturer who maintains the documentation required by the bill.

The bill also provides a cause of action against persons who violate the provisions of the bill. This action can be brought by either the AG or a person that holds a valid importer or manufacturer permit under 26 U.S.C. 5712. The administrative cost impact of this provision on the AG will ultimately be determined by the number of actions initiated.

Explanation of State Revenues: *Shipping of Cigarettes:* This bill will have an indeterminable impact on Cigarette and Sales Tax revenue. Depending upon the ability of the DOR to enforce the provisions in this bill, there could be an increase in Cigarette and Sales Tax revenue. By requiring Indiana residents to obtain a distributor's license before legally receiving tobacco shipments may allow better enforcement. Conversely, by only allowing internet merchants to ship to distributors may also help with enforcement issues. It is indeterminable what effect this bill will have on deterring tax evasion through internet sales and purchases.

Background: Up from only a few in the 1990's, it is estimated that more than 400 web sites currently sell tobacco products. Internet tobacco sales were estimated to make up 2 percent of all tobacco sales in 2003. In 2005 internet tobacco sales are being estimated as making up 14 percent of the total U.S. tobacco market.

Licensure of Importers and Manufacturers: This bill specifies to and from whom distributors, importers, manufacturers and retailers may sell and receive cigarettes. These provisions in conjunction with the licensing requirements may aid the ATC and DOR in monitoring cigarette tax compliance.

The \$500 license fee that is imposed on manufacturers and importers will increase revenue to the ATC's Enforcement and Administration Fund. The increase in revenue will depend upon the number of licenses issued. It is unknown how many importers or manufacturers would seek licenses in Indiana.

This bill provides that violators are liable for civil penalties equal to the greater of: (1) 5 times the value of the cigarettes involved; or, (2) \$1,000. The penalties that are recovered under this provision are deposited in the state General Fund. The increase in revenue will depend upon the number of successful actions brought against violators.

Court Fee Revenue: If additional civil actions occur, revenue to the state General Fund may increase if court fees are collected. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Flea Markets: The bill also adds cigarettes and other tobacco products (OTP's) to items that may not be offered for sale at flea markets. The impact of this provision on cigarette tax revenue is indeterminable. If this provision causes sellers who are currently selling illegally to obtain a tobacco retailer's certificate, cigarette tax and OTP tax revenue could increase slightly. The alternate effect of this provision is that sellers who are now selling at flea markets illegally will simply stop selling cigarettes and OTP's. This alternate effect would result in no fiscal impact.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments

would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.

State Agencies Affected: Department of State Revenue; Alcohol and Tobacco Commission; Attorney General.

Local Agencies Affected: Trial courts, city and town courts.

Information Sources: Terry Collins, DOR, 317-233-0388; Don Attebury, DOR, 317-232-2177; *Convenience Store* (magazine); <http://tobaccofreekids.org/reports/internet/>.

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